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SUBJECT: Khmer Rouge Tribunal: The Trial of S-21
Interrogation Center Head Kaing Guek Eav, week 11

REF: PHNOM PENH 412 AND PREVIOUS

11. (SBU) SUMMARY: Embassy staff routinely observes the proceedings of the trial against the notorious Khmer Rouge torture center head, widely known as Duch, at the Extraordinary Chambers in the Courts of Cambodia (ECCC) (Reftel). This report summarizes the eleventh week of activities inside the court at the Khmer Rouge Tribunal. Translation issues continued to plague the court this week, and questions of proper vetting of civil parties emerged. For more technical accounts of the proceedings, the KRT Trial Monitor has weekly reports. Soft copies of KRT Trial Monitor reports may be downloaded from www.csdcombodia.org; www.kidcombodia.org and at <http://socrates.berkeley.edu/~warcrime/>. END SUMMARY.

12. (SBU) Herewith are observation notes for the week beginning July 6, 2009.

Monday, July 6: There were about 200 people in the audience, mostly male, and mostly Cambodian. Only twenty observers returned after the lunch break.

The judges referred to several administration issues relating to witness testimony schedules for the remainder of the trials. These included deciding who to remove from the witness list, how those witnesses would be removed, and calculating the timing for testimony to cover the week.

Translation issues at the trial continued this week. At one point, the English translator seemed confused about what was said by the defense counsel and asked her to repeat it closer to the microphone.

He also misunderstood and incorrectly translated some of the questions and testimony. One of the civil party lawyers, Alain Werner, stated that he had a problem with some documents referred to by the Accused as they were never provided in English to the civil parties. However, he was chided by Judge Cartwright who told him that everyone in the court was working under difficult conditions and that surely he had able Cambodian co-lawyers who would be able to translate the documents for him. Mr. Werner responded that he had an unofficial translation but never had an official or certified document made available to him, even after several requests.

Mr. Ly Hor provided civil party testimony about his time in Tuol Sleng prison. However, the validity of Mr. Hor's testimony was challenged by the Accused. Mr. Hor's civil party application seemed to contradict his oral testimony. Mr. Hor also had trouble recalling dates and times regarding his detainment and even his communication with the civil party lawyers and DC-CAM. At one point, he was asked about the military regiment he joined before he was captured by the Khmer Rouge. Mr. Hor could not give his division or supervisor during his military service, something that caused the audience to react with murmurs of surprise or concern. His confusion prompted Judge Sylvia Cartwright to warn the civil party lawyers to better prepare their clients before bringing them to court. Duch was extremely prepared and, citing several documents and S-21 records, pointed out discrepancies between the witness's testimony and his paperwork.

Tuesday, July 7: There were about 200 people in the morning session, and about 150 in the afternoon. The morning session focused on testimony by civil party Ly Chan, who alleged that he had been held in S-21 for three months on charges of stealing rice. Judge Nil Nonn asked the Group 3 civil party lawyers if they had any documentation to support Ly Chan's claim that he had been held in S-21. A lawyer for civil party Group 3 replied that his team had been unable to find documentation but had questions that could shed more light on Ly Chan's imprisonment. However, when it was the civil party lawyers' turn to ask questions, they only asked if Ly Chan had noticed any changes in the site when he visited after 1979, as well as questions about the number of guards and the conditions under which he was forced to dig pits for a banana plantation. The defense team vigorously questioned Ly's claim that he had been held at S-21, and Duch stated he doubted Ly Chan's testimony that he was held at S-21, as his name was not on any of the S-21 records.

The afternoon session focused on testimony by another civil party witness, Phork Khan, who said he had been arrested in 1977 and held in Tuol Sleng before being taken to Choeung Ek.

Judge Nil Nonn referred back to Phork Khan's submitted written statement regarding his imprisonment, in which he claimed Duch had threatened him and personally ordered the execution of his group at Choeung Ek. Judge Nil Nonn noted that Phork Khan's written statement was in "stark contrast" to his testimony in court. Phork Khan admitted that the claims in his written statement were not true, and that his spoken testimony in court was the truth. Judge Nil Nonn asked Phork Khan if he was literate, and if he had written the complaint himself, or if he had had help. Phork Khan said that he had written his statement in his home village with the support of an ADHOC [local human rights NGO] representative.

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The international lawyer for Group 3 acknowledged that civil party witnesses had submitted "less than precise" written statements, but emphasized that the witnesses' testimony in court was what was important. She continued that the written statements had been gathered by human rights groups, who were not trained in gathering statements for the court, but had nevertheless helped to identify victims to join the civil case.

The week ended with two other civil parties providing testimony which was challenged by the court. The testimony deviated from the original civil party applications, raising concerns that the applications had not been thoroughly vetted.

Rodley